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No. 98-1863

In The Supreme Court Of The United States

October Term 19 ——

VIRGINIA EARLY RIGGAN

Petitioner

V.

R.W. MOORE EQUIPMENT COMPANY

Respondent

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

REPLY TO BRIEF IN OPPOSITION

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1. THE UNITED STATES SUPREME COURT HAS JURISDICTION.

(A) Final judgments rendered by the highest court in which a decision could be had, may be reviewed by the Supreme Court by Writ of Certiorari..

This case involves Age Discrimination in the Employment Act 29 U.S.C. 621 et seq., and Title VII of the Civil Rights Act of 1964, and the Equal Pay Act, Title 29, United States Codes Section 2069 (d) (1). This case involves a 50 year- old worker who was fired from her job of 18 years and replaced with a 26 year- old male worker. The reason for the termination of the petitioner employment wasn't because the company was down sizing, nor was the petitioner fired for not doing her job. The petitioner was fired due to her age and the fact that the petitioner was 50 years old. The petitioner employment wasn't terminated because the respondent was eliminating the petitioner job, nor was the respondent having a cut back in the labor force.

This is not an issue where the replacement was a 51 year-old worker whom was replaced by a 50 year -old worker. This is not a case where the petitioner was laid off and the employment was terminated eight months later. (*Sahadi* v *Reynolds Chemical*, 636 F 2d 1116 (6th Circuit, 1980).

This case involves a 50 year old worker whom was performing her job duties in a satisfactory professional manner, was never reprimanded during the 18 years of employment, always received good job reviews, received

$1000.00 bonus for doing excellent work prior to the petitioners turning 50 year of age. After the petitioner turned 50 year of age, comments were made to the petitioner by the respondent's comptroller, John Meacham and R. W. Moore, President of R. W. Moore Equipment Company, that the petitioner could be replaced with a younger worker at a lower wage. Three times in 1995, the comment was made. The petitioner felt she had job security, after 18 years of employment. When the respondent R. W. Moore saw the petitioner wasn't going to voluntarily terminate her employment, on December 8th, 1995 at 4:30 PM on a Friday afternoon, the respondent R. W. Moore called the petitioner in his office and offered her a check for $2600.00 to resign. The petitioner asked for a reason. The respondent R. W. Moore advised the petitioner, quote " it was his company and he didn't have to give a reason". The petitioner didn't accept the check and R. W. Moore fired the petitioner. John Meacham, Comptroller lead the petitioner to the back door by the arm, and told the petitioner to leave the premises and never return, that the respondent R. W. Moore would mail the petitioner her belongings which were in her desk. The petitioner wasn't allowed to remove any of her personal belongings but did manage to get her Notary Seal. Within one week after the petitioner was fired, the petitioner was replaced with the younger worker. The replacement was William Lovette III, age 26.

STATEMENT TO BRIEF IN OPPOSITION

Virginia Early Riggan, was fired by the respondent, R.W. Moore because of her age. It is a true statement that the respondent R. W. Moore and John Meacham did comment to the petitioner three (3) times in 1995 that the petitioner could be replaced with a younger worker at a lower wage. R. W. Moore nor John Meacham will never admit to these statements since this matter has gone to court. According to the deposition, which the petitioner has in her possession, R. W. Moore did admit he could have made the statement. Yes, R. W. Moore and John Meacham did make the remark to the petitioner and when the petitioner didn't take heed to there warning, the petitioner was fired without warning December 8, 1995 and the next week William Lovette III, replaced the petitioner at a lower wage.

It is a true statement, Linda Brobson testified. Linda was never asked during her testimony, how she was fired? How she was replaced with a 23 year -old worker, Regina Whaley. Linda Brobson wasn't fired, because she couldn't complete her work orders in a timely fashion, Ms. Brobson was fired because she was almost 50 year old, and R. W. Moore, President of R. W. Moore Equipment Company wanted a younger worker to work in his Wilmington Branch. Linda Brobson had done her job in a satisfactory professional way for the respondent for 12 years and never had a problem until she was almost 50 years of age. The attorney for the respondent in his reply to the Brief in Opposition should have given the correct facts as to what really happened to Linda Brobson. David Hayes was mentioned in the Brief in Opposition. David Hayes was on Christmas vacation

and was called to the office and fired and replaced with a younger worker. Marie Sealey testified on behalf of the petitioner. Ms. Sealey testifed she left the company voluntarily, not because of the petitioner. Ms. Spurrier left the respondent's company, not because of the petitioner, but to accept at job with the State of North Carolina.

The respondent's attorney had Terry Nicholas to testify against the petitioner. Ms. Nicholas voluntarily left the respondent in the 80's to accept a better paying job. The petitioner continued her employment with the respondent more than ten (10) years after Ms. Nicholas quit her employment. Barbara Lane was called to testify. Ms. Lane was hired in June 1996 to work for the respondent. Ms. Lane had an attendance problem, missing 15 days of work and also took a week vacation within 6 months of employment. The respondent became upset at Ms. Lane and took Ms. Lane off straight salary and put her on the time clock. Ms. Lane became very upset over the action of the respondent and voluntarily walked off the job December 8, 1995. Ms. Lane didn't terminate her employment because of the petitioner, Ms. Lane terminated her employment because of the decision Mr. Moore made regarding her salary. Why can't the attorney for the respondent tell the truth, and quit trying to cover up the way the respondent fired the petitioner. The attorney for the respondent had Sylvia McLamb to testify against the petitioner. Ms. McLamb worked in the New Bern office of R.W. Moore Equipment Company, which is 135 miles from the home office where the petitioner worked. The petitioner had no dealing with Ms. McLamb except on a bi-weekly basic when the petitioner was handling the payroll. There is no way Ms. McLamb knew what type of person the petitioner was when she only saw the petitioner one time a year. This is just another way the respondent attorney used the time

to cover up the way the petitioner was fired. Yes, Virginia Early Riggan was fired because of her age, and age was the determining factor in her being fired from her job. The attorney for the respondent spent many hours dwelling on the petitioner income taxes, which had nothing to do with the purpose of the case. This was to take up the courts time.

The petitioner didn't receive a fair trial in United States District Court on her claim of Age and Sex Discrimination and Equal Pay. The United States District Court should have granted the petitioner "a Motion for a New Trial or Judgment Notwithstanding the Verdict." The 4th Circuit Court should have reversed the decision of the United States District Court. The petitioner has in her possession documents which were alternate, after the petitioner agreed to accept the offer of $67,000.00.

The question remain unanswered as to what happened to the $67,000.00 offer and the petitioner agreed to accept. This was not a demand by the petitioner as the attorney for the respondent continues to dwell on. This was an offered settlement and agreed upon by the two attorneys' and the petitioner. Never has the petitioner made a demand for any amount of money. The attorney for the respondent cannot use the excuse that the offer of $67,000.00 was for the cost of the defense. There was no cost of defense, the attorney for the petitioner took the case on a 33-1/3% contingence fee basic, and the petitioners has a signed contract to that effect.

Virginia Early Riggan wasn't fired from her job because she was unpleasant and disruptive to other employees. Virginia Early Riggan was the same person February 28, 1978 that she was December 8th, 1995. The only difference is Virginia Early Riggan was 18 years older. Yes, Virginia Early Riggan was performing her job duties to the satisfaction of the respondent, and had the petitioner never turned 50 year of age, she would continued to be employed with R. W. Moore Equipment Company.

It was the decision of the Equal Employment Opportunity Commission to issue the "Right to Sue" to the petitioner in this matter. It was the decision of the petitioner to continue this case to the 4th Circuit Court, in hopes of getting a fair decision of the courts. This is a prima facie case of Age Discrimination.

Yes, Virginia Early Riggan was fired because of Age and Sex Discrimination, as described in the *James O'Connor* v *Consolidated Coin Caterers* Corp. (95-354) 56f 3d 542, 545, 548 (4th Cir), Rec'd 116 s.ct 1307 (1996). Virginia Early was within the protective age group, age 40 and over. Virginia Early Riggan can establish a prima facie case of Age & Sex Discrimination under the *McDonald Douglas Corp.* v *Green* 411-U.S. 792 93 s.ct. 1817 36L ed 2d 668.

The level of proof must fall against the respondent. The respondent should present to the courts signed reprimands by the petitioner, of any warning regarding unpleasant or disruptive comments. The respondent should produce documents to the courts, to prove to the courts the truth of case, that William Lovette III replaced the petitioner within one week after the petitioner was fired. William Lovette III had no experience in the

position he was hired for and had never been employed by the respondent prior to December 8, 1995.

Virginia Early Riggan wasn't fired from her employment because she was unpleasant as described in the Brief of Opposition filed by the respondent attorney. If the petitioner was such a terrible, unpleasant and disruptive person, which is a false statement by the respondents' attorney, why did R. W. Moore President of R. W. Moore Equipment Company keep the petitioner employed for 18 years. If this was the case the petitioner should have been terminated in 1978, not 18 years later when the petitioner was 50 years old. Virginia Early Riggan wasn't the abusive person claimed to be by the respondent, this is the way the respondent attorney covers up the way the respondent fired the petitioner. According to the (ADEA) Age Discrimination in Employment Act of 1967, the petitioner should be protected, because the petitioner was within the protective age group and was replaced by someone outside the protected age group. The petitioner can prove to the courts she was within the protective age group.

After the petitioner was fired, the petitioner took a job at less wages with very few benefits. According to Dr. James Bellard with Raleigh Psychiatric, whom saw the petitioner after she was fired indicated in his deposition, the petitioner is suffering from Post Tramatic Stress, a medical condition which was brought on by the firing and the way the petitioner was fired. The petitioner had never suffered such a condition until after she was fired. The petitioner has a transcript of the deposition of Dr. James Bellard to back up this evidence. Never one time has the issue referred to the medical condition, the firing has cause the petitioner. This firing left such a mental condition on the petitioner that she was unable to drive a

car for many months. Even at her new job she had constant fear that she will be fired.

Yes this is a case of Age and Sex Discrimination, and Equal Pay. This Equal Pay was where the $67,000.00 offer was offered. The break down was the difference in my salary and my co-worker salary, the 33-1/3% contingence fee for the petitioners' attorney and the remaining was for the way the respondent fired the petitioner. Again there was never a demand for $67,000.00 from the petitioner. This was an agreed amount between the two (2) attorneys' and the petitioner. The Equal Pay was discussed with the Equal Employment Opportunity Commission, prior to the case going to court, before any suit was filed. The respondent had to produce the break-down of the salary of the co-worker, Billy Barton, for comparison with the salary of the petitioner.

CONCLUSION

The 4th Circuit Court of Appeals was wrong in affirming the decision of the United States District Court. The 4th Circuit Court should have granted the petitioner a "Motion for a New Trial or Judgment Notwithstanding the Verdict. The petitioner respectfully request the Supreme Court to grant the Petition for Writ of Certiorari in favor of the petitioner.

This the 16th day of July, 1999.

Respectfully submitted,

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